August 13, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

RE: WC Docket No. 02-147

Dear Chairman Powell:

On behalf of AARP, I am writing to oppose the effort of AT&T and Lucent in this docket to preempt state consumer protection laws with respect to those companies' practices in leasing customer premises equipment (CPE) to primarily elderly consumers. We recognize the important role that the Federal Communications Commission (FCC) plays in protecting the interests of consumers on a wide range of issues. We have particularly appreciated the FCC's efforts to protect consumers from deceptive and misleading telecommunications practices and are asking the Commission to continue those efforts.

In this proceeding, AT&T and Lucent seek a declaratory ruling that certain consumer protection claims, raised by a group of long-standing customers who have continued to lease phones long after they became readily available for purchase, are somehow preempted by FCC orders deregulating CPE leasing practices almost 20 years ago. The Commission has already spoken to these issues. In the *amicus* brief cited in the Commission's public notice, it explained to the Illinois court that in deregulating CPE in favor of marketplace protections, it had intended to preempt state *tariff* regulation of CPE, but did "not intend to preempt the application of more general state laws to telephone companies that provide CPE in a competitive environment."[1]

The Commission was clearly correct in its assessment then, and Lucent's recent filing does nothing to warrant any change in the Commission's position now. While purporting not to question any of the Commission's prior conclusions,[2] Lucent now asks the Commission to "reaffirm" findings it never in fact made, and which are inconsistent with the determinations set forth in the Commission's *amicus* brief.[3] Moreover, Lucent now asks the Commission to interject itself into pending state proceedings on the eve of trial and issue rulings regarding what claims and evidence the court may and may not consider. We urge the Commission to deny this petition and allow these elderly consumers to pursue their state law consumer protection claims in the Illinois state court without interference or delay.

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1 Memorandum of Federal Communications as Amicus Curriae at 4, *Crain v. Lucent Technologies, Inc.*, No. 96-LM-983 ("*Amicus Brief*").

2 Lucent Technologies Inc's Third Supplement to Petition for Declaratory Ruling, *Motion of Lucent Technologies Inc. for Declaratory Ruling*, filed may 23, 2002, at 6.

3 *Id.* at 2.

Plaintiffs in the pending Illinois action allege that 44 million U.S. consumers have been harmed by fraudulent and deceptive practices by AT&T and Lucent to the tune of $10 billion. An article appearing in *Time* magazine recounts one typical example: an elderly woman named Roberta Sweetow has paid over $1,000 in leasing fees for a phone she hardly uses — $18.00 every three months for a phone she ultimately bought for $9.00 once she realized she had been billed for it for years.[4]

The claim of AT&T and Lucent that the FCC intended to preempt claims alleging such knowing, intentional deception of an embedded base of customers in violation of state law — years after the Commission stopped regulating CPE — finds no support in the language of the CPE Orders. To preempt such claims now, in the absence of any demonstration that they would undermine any contrary Commission interest in a market it deregulated long ago, would be disturbing.

Preemption would also run counter to the premise of the Commission's deregulation initiatives. In similarly deregulating long distance services, which the Commission has recognized as "analogous" here,[5] the Commission determined that providers of those services would be "subject to the same incentives and rewards that firms in other competitive markets confront."[6] These include, specifically, the "remedies provided by state consumer protection laws and contract law against abusive practices."[7] If deregulated firms were no longer subject to the same consumer protection laws as other firms, their customers would have no recourse against market abuses — such as depriving customers of the information necessary to make informed marketplace choices about leasing or buying phones.

There appears to be no legal or policy justification for interfering with pending state proceedings, as is now urged upon the Commission by AT&T and Lucent. After six years of delay, elderly consumers like Ms. Sweetow deserve their day in court and their opportunity to avail themselves of the "remedies provided by state consumer protection law" that this Commission has explicitly recognized as foundational. The Commission should not permit those rights and remedies to be undermined.

AARP appreciates having the opportunity to comment on this proceeding. If you have any questions or comments, please feel free to call me or have your staff contact Jeff Kramer of our Federal Affairs staff at 202/434-3800.

Sincerely,

David Certner
Director
Federal Affairs

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4 Sean Gregory, *How'd You Like to Rent this Baby?*, Time, July 8, 2002.

5 *Amicus* Brief at 5.

6 Second Report and Order, *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 20730, 20733 ¶ 5 (1996).

7 *Id.* ¶ 5.